

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Tony A. Wald,)	
)	
Plaintiff,)	
vs.)	Case No.: 2:12-cv-01423-GMN-VCF
)	
Carolyn W. Colvin, Acting Commissioner)	ORDER
of Social Security,)	
)	
Defendant.)	

Pending before the Court is the Report and Recommendation of United States Magistrate Judge Cam Ferenbach. (ECF No. 24.) Plaintiff Tony A. Wald filed an Objection (ECF No. 25), to which Defendant filed a Response (ECF No. 28). For the reasons discussed below, the Court will accept and adopt in full Judge Ferenbach's Report and Recommendation to the extent that it is not inconsistent with this opinion.

I. BACKGROUND

This action was referred to Judge Ferenbach pursuant to 28 U.S.C. § 636(b)(1)(B) and District of Nevada Local Rule IB 1-4. Judge Ferenbach recommended that this Court enter an order granting Defendant's Motion to Remand (ECF No. 23) pursuant to Local Rule 7-2(d) for failure to oppose Defendant's motion.

Plaintiff objects to Judge Ferenbach’s findings and argues that the briefing history of the litigation does not support the granting of Defendant’s motion on this basis. Plaintiff filed a motion styled as a “Motion for Reversal and/or Remand” (ECF No. 19) on April 7, 2013, and after an extension was granted (ECF No. 22), Defendant filed its brief styled as a “Notice of Motion and Motion to Remand” (ECF No. 23) on June 10, 2013.

II. LEGAL STANDARD

A party may file specific written objections to the findings and recommendations of a United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B); D. Nev. R. IB 3-2. Upon such a filing, the Court must make a de novo determination of those portions of the Report to which objections are made. *Id.* The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1); D. Nev. IB 3-2(b).

III. DISCUSSION

Here, Plaintiff argues that Judge Ferenbach's reasoning is insufficient in that it is solely based upon an improper application of Local Rule 7-2(d). Plaintiff is correct that Judge Ferenbach did not include any other basis for his findings and recommendation, but the Court cannot conclude that Judge Ferenbach's application of Local Rule 7-2(d) is improperly applied.

The Court's review of the docket and the captions of the parties' briefs (ECF Nos. 22, 23) indicate a likely source of confusion as to the required briefing. However, the Court cannot find that this source of confusion excuses Plaintiff's failure to properly oppose Defendant's request, particularly where the March 6, 2013, Order Concerning Review of Social Security Cases (ECF No. 18) specifically details the briefing requirements and deadlines, and warns that "[f]ailure of a party to file a motion or points and authorities required by this Order may result in dismissal of the action or reversal of the decision of the SSA."

Also, the parties specifically stipulated that Defendant shall have until June 10, 2013, to file an opposition. Therefore, regardless of the caption used by Defendant, Plaintiff was on notice that a response to Defendant's June 10, 2013, filing was required.

1 For these reasons, the Court finds no basis to reject Judge Ferenbach's findings,
2 and Plaintiff presents no other grounds for the Court to reject Judge Ferenbach's
3 recommendation.

4 Finally, the Court's review of the record indicates that remand is justified on the
5 merits, in addition to the grounds articulated by Judge Ferenbach.

6 **IV. CONCLUSION**

7 **IT IS HEREBY ORDERED** that the Report and Recommendation (ECF No. 24)
8 be **ACCEPTED and ADOPTED** in full, to the extent that it is not inconsistent with this
9 opinion.

10 **IT IS FURTHER ORDERED** that the Motion to Remand (ECF No. 23) is
11 **GRANTED**. The Clerk shall enter judgment accordingly.

12
13 DATED this 13th day of January, 2014.

14
15 

16 _____
17 Gloria M. Navarro
18 United States District Judge
19
20
21
22
23
24
25